IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

CRL.A.No. 953 of 2002()

SC.226/2000 of ADDL. SESSIONS COURT (ADHOC), THODUPUZHA

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APPELLANT: ACCUSED

THANKAMONY, S/O.RAJ, 8 MURI LAYAYAM
TOP DIVISION, UDARAVILA ESTATE,
KDH VILLAGE.

BY ADV. SRI.SOJAN MICHEAL

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI PUZHAKKARA MUHAMMED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 12/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

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Crl.A No. 953 of 2002 (C)

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Dated this the 12th day of March, 2007

J U D G M E N T

The accused in S.C No.226/2000 on the file of Additional Sessions Court (Ad hoc-I), Thodupuzha, is the appellant. He was found guilty of the offence under Section 55(a) of the Abkari Act, in short 'the Act'. Therefore, he was convicted and sentenced to undergo simple imprisonment for a period of three months and to pay a fine of rupees one lakh in default further simple imprisonment for three months. The same is under challenge through this appeal.

2. The brief facts required for the disposal of this appeal are that PW.1, the Assistant Sub Inspector of Police, and PW.2, the Head Constable, both belonging to Devikulam Police Station had detected 1½ litres of arrack from House No.MP. V/422 of Munnar Panchayat, on 30/01/1998, at about 6 p.m.. Exhibit P1 seizure mahazar had been prepared and the contraband seized. PWs.3 and 4 were the attestors. The samples were taken and they were sent for chemical analysis.

Exhibit P4 chemical analysis certificate was obtained. PW.5, the Sub Inspector of Police, on completion of the investigation filed the charge sheet. The lower court accepted the evidence of the prosecution which consists of five witnesses and five documents along with MO.1 series, arrack with one kannas and bottle.

3. The learned counsel for the appellant mainly contended, relying on the contradictions in the evidence of PWs.1 and 2, emphasising on the quantum of sampling taken from the contraband for sending for chemical analysis. The unexplained period of keeping of the contraband from 30/01/1998, the alleged date of detection, to 26/03/1998, when the contraband was produced before the lower court is assailed as unauthorised and suspicious. The samples were sent for chemical analysis only on 06/07/1998. The counsel also relied on S.R.O No.321/96 and argued that PW.1, the Assistant Sub Inspector of Police is not authorised to detect the cases under the Act.

4. In S.R.O No. 321/1996, it is stated that under Section 4 of the Act, the Government of Kerala appointed all the police officers of and above the rank of Sub Inspector of Police

in-charge of Law & Order, working in the General Executive Branch of the Police Department and all Revenue Officers of and above the rank of Deputy Collectors to be Abkari Officers under their respective jurisdiction, to exercise all the powers and to discharge all the duties conferred and imposed on Abkari Officers under the relevant sections. The counsel therefore, argued that PWs.1 and 2 being the Assistant Sub Inspector of Police and Head Constable, had no authority to seize the contraband from the possession of the appellant. I had directed the prosecution to verify the points thus raised. S.R.O.No.321/1996, as conceded by the learned Public Prosecutor, is conferring authority, only to the police officers to the rank of Sub Inspector of Police and above, and not Assistant Sub Inspector of Police. Therefore, I hold that the conduct of seizure by PW.1, the Assistant Sub Inspector of Police, with the help of PW.2, the Head Constable, is against the powers conferred through S.R.O No.321/1996.

5. PW.1 has stated that three samples were taken during the preparation of Exhibit P1 seizure mahazar and thus three samples were sent for chemical analysis. Whereas, PW.2,

the Head Constable, had deposed that six samples were taken and all the six of them were sent for chemical analysis. Exhibit P4 chemical analysis report states that the analyst had received six samples for analysis. There is no explanation available why the seizure which took place on 30/01/1998 had been produced before the court below on 26/03/1998 only. There is also no explanation available to show, under whose custody were these samples kept, from the date of seizure to the date of production before the court below. When PWs.3 and 4, the independent witnesses, had turned hostile to the prosecution case, the prosecution has to prove clearly that there was no tampering of the sampling taken, as well as the samples sent for chemical analysis. The versions of PWs.1 and 2 being contradictory in nature, I am not able to accept the same. Therefore, I hold that the prosecution has not proved the case as required under the law and PW.1 had no authority and power under Section 31 of the Act to search the house and seize the contraband.

In view of the above discussions, I hold that the accused-appellant is not guilty of the offence under Section 55(a) of the Act. Therefore, the impugned judgment dated

29/10/2002, the conviction and sentence passed thereunder, are set aside. The appellant is set at liberty forthwith, cancelling his bail bond.

(J.M.JAMES)
Judge

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J.M.JAMES, J.

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J U D G M E N T

12th March, 2007